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November 16, 2020

VIA ECF

Honorable Sarah L. Cave, United States Magistrate Judge
United States District Court, Southern District of New York
500 Pearl Street, Room 1670
New York, New York 10007

Re: *Curry v. P&G Auditors, et al.*, Docket No. 20-cv-06985 (LTS)(SLC)

Your Honor:

This firm represents the defendants named as P&G Auditors and Consultants, LLC, GRC Solutions, LLC and PGX, LLC (“Contractor Defendants”) in the above referenced action. I write in anticipation of the upcoming conference scheduled before the Court for November 20, 2020.

Among the matters to be addressed during the November 20, 2020 call are “the status of service and deadlines to answer for” Contractor Defendants. By this appearance, the Contractor Defendants do not waive, and expressly reserve all rights concerning, the affirmative defense of defective service of process, as reflected in the certificates of service filed on the docket as to each of them. *See* Docket Doc. Nos. 23-25. Notwithstanding that affirmative defense, and in the interest of expediting disposition of this matter, the Contractor Defendants respectfully request forty-five days from the date of this submission in which to file a responsive pleading or otherwise move as to the complaint. When the undersigned proposed this schedule to plaintiffs’ counsel, it was summarily rejected.

The reason for this request is threefold. First, this firm has only recently finalized the terms of its representation of the Contractor Defendants in this action. Second, it is anticipated that the certain of the Contractor Defendants’ responsive pleading will seek the joinder of certain parties to this action. And third, we are currently exploring the basis upon which to seek dismissal of the claims asserted against at least one of the Contractor Defendants under Federal Rule 12.

According to the allegations in the Complaint, none of the three named plaintiffs were engaged by the Contractor Defendants in their individual capacities. Rather, the Contractor Defendants engaged each of the Plaintiffs’ business entities – KDC Consulting LLC, Mazzitelli Consulting, LLC and Bropil Consulting, LLC – for services to be provided by the Plaintiffs. It was these business entities, and *not* the Contractor Defendants, which assumed the responsibility

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for compliance with all applicable laws, including wage payment laws, as to each of the Plaintiffs in the first instance. Through those business entities, Plaintiffs represented themselves to the Contractor Defendants as experienced Anti-Money Laundering professionals who have for *years* provided similar services to similar clients through their respective business entities. Plaintiffs in this action have elected to identify Defendants, among all the clients that they have serviced in years previous, as having misclassified them as independent contractors when they should have been classified as employees. Accordingly, it is plain from the face of the Complaint that each of the Plaintiffs' business entities must be joined as crossclaim defendants in this action. *See, e.g.*, Complaint, ¶¶ 100, 112, 121 (acknowledging that Plaintiffs provided services pursuant to agreements between certain of the Contractor Defendants and their business entities). What's more, in light of the fact that certain of the Contractor Defendants acted in reliance upon those representations when they entered into service agreements with those business entities, the Contractor Defendants anticipate that they will have grounds to join in Apple Bank's anticipated motion seeking summary judgment on the issue of whether any alleged failure to pay overtime on their part was willful.

We look forward to discussing these matters with the Court.

Respectfully submitted,

Davis Wright Tremaine LLP

/s/

Michael Goettig